

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GARY ZAGAMI, derivatively on behalf of
CASSAVA SCIENCES, INC.,

Plaintiff,

v.

REMI BARBIER, ERIC J. SCHOEN,
JAMES W. KUPIEC, NADAV
FRIEDMANN, MICHAEL MARSMAN,
ROBERT Z. GUSSIN, MICHAEL J.
O'DONNELL, SANFORD R. ROBERTSON,
and PATRICK J. SCANNON,

Defendants,

and

CASSAVA SCIENCES, INC.

Nominal Defendant.

PATRICIA MATRANGA, Derivatively on
Behalf of CASSAVA SCIENCES, INC.,

Plaintiff,

v.

REMI BARBIER, ERIC J. SCHOEN,
JAMES W. KUPIEC, NADAV
FRIEDMANN, ROBERT Z. GUSSIN,
MICHAEL J. O'DONNELL,
SANFORD R. ROBERTSON, and
PATRICK J. SCANNON,

Individual Defendants,
-and-

CASSAVA SCIENCES, INC., a Delaware
Corporation,

Nominal Defendant.

Case No. 1:21-cv-00998-RP

Case No. 1:22-cv-00028-RP

BRIAN WALSH, derivatively on behalf of
CASSAVA SCIENCES, INC.,

Plaintiff,

v.

REMI BARBIER, ERIC J. SCHOEN, JAMES
W. KUPIEC, NADAV FRIEDMANN,
MICHAEL MARSMAN, ROBERT Z.
GUSSIN, MICHAEL J. O'DONNELL,
SANFORD R. ROBERTSON, and PATRICK
J. SCANNON,

Defendants,

and

CASSAVA SCIENCES, INC.,

Nominal Defendant.

Case No. 1:22-cv-00053-RP

**AGREED MOTION CONSOLIDATING RELATED ACTIONS, APPOINTING
CO-LEAD COUNSEL FOR PLAINTIFFS, AND STAYING CASE**

Plaintiffs Gary Zagami (“Zagami”), Patricia Matranga (“Matranga”), and Brian Walsh (“Walsh,” and with Zagami and Matranga, “Plaintiffs”), and nominal defendant Cassava Sciences, Inc. (“Cassava” or the “Company”) submit this agreed motion consolidating the above-captioned actions, appointing Co-Lead Counsel for plaintiffs, and staying the consolidated action pending the resolution of motion(s) to dismiss the pleadings in related class action proceedings pending before this Court.

1. On November 4, 2021, Plaintiff Zagami filed a stockholder derivative complaint on behalf of Cassava alleging breach of fiduciary duties, unjust enrichment, waste of corporate assets, and violations of Section 14(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), among other causes of action, by defendants Remi Barbier, Eric J. Schoen, James W.

Kupiec, Nadav Friedmann, Michael Marsman, Robert Z. Gussin, Michael J. O'Donnell, Sanford R. Robertson, and Patrick J. Scannon (collectively, the "Individual Defendants," and with Cassava, "Defendants;") (Defendants and Plaintiffs referred to collectively herein as, the "Parties"), who are officers and/or directors of Cassava (the "Zagami Action"). *See* ECF 1.

2. Between August 27, 2021 and October 26, 2021, individual plaintiffs filed four class action complaints against Cassava and certain of its officers and directors alleging violations of the federal securities laws in this Court (*see Brazeau v. Cassava Sciences, Inc.*, Case No. 1:21-cv-00751-RP; *Newell v. Cassava Sciences, Inc. et al.*, Case No. 1:21-cv-00760-RP; *Rein v. Cassava Sciences, Inc. et al.*, Case No. 1:21-cv-00856-RP; and *Rao v. Cassava Sciences, Inc. et al.*, Case No. 1:21-cv-00971-RP) on behalf of purported classes of Cassava investors (together, the "Securities Actions").

3. The complaints in the Securities Actions concern the same or similar subject matter as the complaint in the *Zagami Action*.

4. On October 26, 2021, candidates for lead plaintiff in the Securities Actions filed motions for consolidation and to appoint a lead plaintiff, and briefing on those motions was completed on November 16, 2021.

5. It is expected that: (a) the Court will consolidate the Securities Actions into a single action and appoint a lead plaintiff; (b) the lead plaintiff will file a consolidated amended complaint; and (c) the defendants in the Securities Actions will thereafter move to dismiss the consolidated amended complaint.

6. On November 23, 2021, Plaintiff Zagami and Nominal Defendant Cassava moved to stay the *Zagami Action* (the "Agreed Motion to Stay") until the resolution of an anticipated motion to dismiss in the Securities Actions. *See* ECF 8.

7. In the Agreed Motion to Stay, counsel for Cassava agreed to accept service of the complaint in the *Zagami* action for Defendants.

8. The Court has yet to rule on the Agreed Motion to Stay.

9. On January 11, 2022, Plaintiff Matranga filed a stockholder derivative complaint on behalf of Cassava alleging breach of fiduciary duties, unjust enrichment, and violations of Section 14(a) of the Exchange Act, among other causes of action, by many of the same Individual Defendants (the “*Matranga* Action”).

10. The complaint in the *Matranga* Action concerns the same or similar subject matter as the complaints in the *Zagami* Action and the Securities Actions.

11. On January 19, 2022, Plaintiff Walsh filed a stockholder derivative complaint on behalf of Cassava alleging breach of fiduciary duties and violation of Section 14(a) of the Exchange Act, among other causes of action, by the Individual Defendants (the “*Walsh* Action”).

12. The complaint in the *Walsh* Action concerns the same or similar subject matter as the complaints in the *Zagami* Action, the Securities Actions, and the *Matranga* Action (the *Zagami* Action, the *Matranga* Action, and the *Walsh* Action,” collectively the “Related Derivative Actions”).

13. Events may unfold in the Securities Actions over the coming months that may promote the just and efficient case management of the Related Derivative Actions.

14. Under Fed. R. Civ. P. 42(a), when actions involve “a common question of law or fact,” the Court may “(1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.”

15. The Related Derivative Actions challenge the same alleged conduct by substantially the same Company directors and officers and involve substantially the same questions of law and fact.

16. Plaintiffs and Cassava, therefore, respectfully submit that consolidation of the Related Derivative Actions is appropriate.

17. To avoid potentially duplicative actions and to prevent any waste of the Court's and the Parties' resources, Plaintiffs and Cassava agree that the Related Derivative Actions should be consolidated for all purposes, including pre-trial proceedings and trial, into a single consolidated action.

18. To realize the efficiencies made possible by consolidation of the Related Derivative Actions, Plaintiffs agree that The Brown Law Firm, P.C. and Levi & Korsinsky, LLP, the resumes of which are attached hereto as Exhibit A and Exhibit B respectively, shall be designated as Co-Lead Counsel to represent plaintiffs in the consolidated derivative action.¹

19. Plaintiffs and Cassava hereby move to consolidate the Related Derivative Actions, appoint Co-Lead Counsel for plaintiffs, and stay the consolidated action pursuant to the following terms:

20. The undersigned counsel for Cassava agrees to accept service of the complaints in each of the Related Derivative Actions for Defendants, to the extent that service of such complaints has not already been agreed or effected.

21. The following actions are hereby consolidated for all purposes, including pre-trial proceedings and trial, under Case No. 1:21-cv-00998-RP (the "Consolidated Action"):

¹ Cassava takes no position regarding appointment of Co-Lead Counsel for plaintiffs.

<u>Case Name</u>	<u>Case Number</u>	<u>Date Filed</u>
<i>Zagami v. Barbier, et al.</i>	1:21-cv-00998-RP	November 4, 2021
<i>Matranga v. Barbier, et al.</i>	1:22-cv-00028-RP	January 11, 2022
<i>Walsh v. Barbier, et al.</i>	1:22-cv-00053-RP	January 19, 2022

22. Every pleading filed in the Consolidated Action, or in any separate action included herein, must bear the following caption:

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE CASSAVA SCIENCES, INC.
DERIVATIVE LITIGATION

Lead Case No. 1:21-cv-00998-RP

This Document Relates to:

ALL ACTIONS

23. All papers filed in connection with the Consolidated Action will be maintained in one file under Lead Case No. 1:21-cv-00998-RP.

24. Co-Lead Counsel for plaintiffs for the conduct of the Consolidated Action shall be:

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25. Plaintiffs' Co-Lead Counsel shall have the sole authority to speak for Plaintiffs in all matters regarding pre-trial procedure, trial, and settlement negotiations and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.

26. Co-Lead Counsel will be responsible for coordinating all activities and appearances on behalf of Plaintiffs. No motion, request for discovery, or other pre-trial or trial proceedings will be initiated or filed by any Plaintiffs except through Co-Lead Counsel.

27. Defendants' counsel may rely upon all agreements made with Co-Lead Counsel, or other duly authorized representative of Co-Lead Counsel, and such agreements shall be binding on all plaintiffs in the Consolidated Action.

28. This Order shall apply to each related shareholder derivative action involving the same or substantially the same allegations, claims, and defendants, and arising out of the same, or substantially the same, transactions or events as the Consolidated Action, that is subsequently filed in, removed to, reassigned to, or transferred to this Court ("Potential Subsequent Related Derivative Actions"). When a shareholder derivative action that properly belongs as part of *In re Cassava Sciences, Inc. Derivative Litigation*, Lead Case No. 1:21-cv-00998-RP, is hereafter filed in this Court, removed to this Court, reassigned to this Court, or transferred to this Court from another court, this Court requests the assistance of counsel in calling to the attention of the Clerk of the Court the filing, removal, reassignment, or transfer of any case that might properly be consolidated as part of *In re Cassava Sciences, Inc. Derivative Litigation*, Lead Case No. 1:21-cv-

00998-RP, and counsel are to assist in assuring that counsel in subsequent actions receive notice of this order. Unless otherwise ordered, the terms of all orders, rulings, and decisions in the Consolidated Action shall apply to Potential Subsequent Related Derivative Actions filed in this Court, removed to this Court, reassigned to this Court, or transferred to this Court from another court.

29. All papers and documents previously filed and/or served in the Related Derivative Actions shall be deemed a part of the record in the Consolidated Action.

30. All proceedings in the Consolidated Action are stayed until the resolution of the anticipated motion to dismiss in the Securities Actions, whereupon the stay shall automatically expire.

31. Cassava shall promptly notify Plaintiffs of any related stockholder derivative actions, demands for books and records under 8 Del. C. § 220 or litigation demands made upon Cassava's board of directors that concern the same or similar subject matter as the Consolidated Action.

32. In the event that (a) a related stockholder derivative action is filed in this district or any other; and (b) that action is not stayed for a period of equal or greater duration, Cassava shall promptly notify Plaintiffs thereof, and Plaintiffs may lift the stay by providing thirty (30) days' notice to Cassava's undersigned counsel via email.

33. Following the expiration or lifting of the stay, Cassava will not move to stay the Consolidated Action in deference to any other derivative action.

34. Within two (2) weeks of the expiration or lifting of the stay, the Parties will meet and confer to agree upon a schedule for proceedings in this action and file a stipulation regarding the same with the Court.

35. Plaintiffs may file an amended complaint during the pendency of the stay, but such filing will not affect the pendency of the stay, and Defendants will not be required to move, answer, plead, or otherwise respond to any complaint during the pendency of the stay of proceedings.

36. During the pendency of the stay, should Cassava produce documents in connection with a books and records demand under 8 Del. C. § 220 or another filed or threatened stockholder derivative action concerning the subject matter at issue in the Consolidated Action, Cassava shall also promptly make those documents available to Plaintiffs, subject to the execution of a mutually agreeable confidentiality agreement or protective order.

37. During the pendency of the stay, Cassava will include Plaintiffs in any mediation with the plaintiff(s) in the Securities Actions (or any filed or threatened derivative action concerning the same subject matter), except that if plaintiffs in the Securities Actions (or any filed or threatened derivative action) object to including Plaintiffs in such mediation, Cassava will mediate with Plaintiffs at or about the same time.

38. The Parties do not waive any rights or defenses not specifically addressed herein. This Agreed Motion will serve the interests of justice and the Parties agree that the proposed Order filed herewith may be entered without further notice.

Respectfully submitted,

/s/ *Claudia Wilson Frost*
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/s/ Willie C. Briscoe

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Additional Counsel for Plaintiffs Gary Zagami and Brian Walsh

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred by phone and/or email on January 24, 25, 26, and 27, 2022 with counsel for Cassava Sciences, Inc. and/or counsel for Patricia Matranga who confirmed that Defendants and plaintiff Patricia Matranga are not opposed to this motion.

/s/ Stuart L. Cochran

Stuart L. Cochran

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on January 27, 2022. All others will be mailed by first-class mail.

/s/ Stuart L. Cochran

Stuart L. Cochran